IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 636 OF 2005

IN

FIRST APPEAL NO. 60 OF 1998

SHRI KRISHNANATH K.PAI KAKODE & ANR. ....Applicants

Versus

SHRI FONDU KUIRO VELIP & ORS. ....Respondents

Mr. S. S. Kantak with Ms. Gauri Bhonsule, Advocates for the applicants.

Mr. R. G. Ramani, Advocate for the respondents No.1, 2(a) and 2(b).

Coram:- R. M. LODHA, J.

Date:- 14th September, 2005

P.C.

This miscellaneous civil application has been taken out by the appellants/applicants raising therein their grievance that the report dated 26.2.2005 submitted by the Commissioner may not be admitted in evidence for the reasons set out therein. In the alternative, it is prayed that the appellants/applicants be allowed to cross examine the Commissioner before making the report part of the evidence.

2. On 29/10/2004, this Court directed thus :

> " It is, therefore, directed that the Director of Settlement and Land Records, Government of Goa, shall cause a fresh survey report regarding the land holding of Shri Narayan Dolo Gauncar, Smt. Premavati Narayan Gauncar, Shri Zorgo Tulo Velipo, Smt. Draupadi Zorgo Velip, Shri Zorgo Calsu Gauncar,Shri Govinda

Sucdo

> Gauncar, Shri Rama Cantu Gauncar, Shri Nagu Puna Gauncar, Smt. Savitri Nagu Gauncar and Shri Chimbot Zori Gauncar, residents of Barcem and submit a report to this Court within four weeks from today. The report will indicate whether the land owned by these persons and purportedly sold to the appellants vide sale deed dated 1st January, 1987, falls in survey no.26 and part of survey no.24 with matriz no.202, or it falls in survey no.27/3 with matriz no.198. In short, it would be necessary to identify the agricultural land in matriz no.198 as well as 202 vis-a-vis the survey plan. Needless to mention that the Director of Settlement and Land Records will issue notice to the respective parties and ask them to remain present on the spot on a given date."

3. Pursuant to the Order dated 29th October, 2004, the Court Commissioner submitted the report on 26.2.2005. Obviously the Court Commissioner was appointed by this Court under Order 26, Rule 9 C.P.C.

4. Sub-Rule (2), Rule 10 of Order 26 provides that the report of the Commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report. The alternative prayer made by the appellants/applicants to permit them to examine the Commissioner personally in respect of the report submitted by him on 26.2.2005 appears to be fair and reasonable. The learned Counsel for the respondents No.1, 2(a) and 2(b) does not oppose this prayer made by the appellants/applicants.

5. I, accordingly, dispose of this miscellaneous civil application by the following order :

The report dated 26.2.2005 submitted by P.P. Bandekar, Court Commissioner along with the original record and proceedings of Special Civil Suit No. 74/97/A and Special Civil Suit No.52/92/A is ordered to be transmitted to the Court of Civil Judge, Senior Division, Quepem for examination of P.P. Bandekar by the appellants/applicants.

The parties are directed to appear before the said Court on 10th October, 2005.

The Civil Judge, Senior Division, Quepem shall record the examination of the Court Commissioner P.P. Bandekar and transmit the same along with the report and the original record and proceedings of the aforesaid suits as early as possible and preferably within one month from the date of the appearance of the parties.

The Office is directed to post the first appeal under caption "For Direction" on 23rd November, 2005

Miscellaneous civil application stands disposed of accordingly.

R. M. LODHA, J.